85-583

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1985

Patricia A. Fahey,

Appellant - Defendant

V.

James E. Beckley
James E. Beckley & Associates,

Appellee - Plaintiff

On Appeal from the United States Federal District Court for the Northern District, Eastern Division, Chicago, Illinois

JURISDICTIONAL STATEMENT

PATRICIA A. FAHEY
Appellant, Pro Se
C/O Ms Marte Skorupskyj
255 West End Avenue
New York, New York
10023

EDITOR'S NOTE

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255 West End Avenue
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QUESTIONS PRESENTED

I

Whether the U.S. Federal District Court for the Northern District, Eastern Division, in Chicago, Illinois, has Jurisdiction Over The Person of the Defendant who resides in New York in a Civil Action in Chicago, Illinois under the Illinois Long Arm Statute where there was no business transaction conducted within the State by the Defendant and there was no Personal Service of Process effected on the Defendant.

II

Whether the U.S. Federal

District Court for the Northern District, Eastern Division, in Chicago, Illinois, has to give Full Faith and Credit under Section 1738, Judiciary and Judicial Procedure, Title 28 U.S.Code, to the Proceedings, Records, and Decisions of the State Probate Court of the Twelfth Judicial Circuit Court, Will County, Illinois in dealing with the same claim for attorneys' fees and with the same evidence presented by the Plaintiff in the State Court making the Action Res Judicata.

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REFERENCE TO THE OPINION

Reference is given to the Opinion entered in the Court below in regard to Rules 12(b)(1) to 12(b)(6) of the Federal Rules of Civil Procedure and also to Section 1738, of Judiciary and Judicial Procedure, or Section 1 of Article IV of the Federal Constitution, as more fully appear in the Memorandum and Order by the U.S. Federal District Court for the Northern District, Eastern Division, Chicago, Illinois, herewith reproduced as Appendix A.

The Seventh Circuit Court of Appeals claims it has no jurisdiction. Order from the Seventh

Circuit Appeals Court also herewith reproduced as Appendix B.

JURISDICTION

Jurisdiction of the U.S.Supreme Court is invoked under Section 2, Article III of the Federal Constitution (Controversies Arising Under the Constitution Between Citizens of Different States), and also under Section 1, Article IV of the Federal Constitution (Full Faith And Credit) or Section 1738 of Judiciary and Judicial Procedure, Title 28, U.S. Code on the following grounds:

(i) In a Civil Action, the U. S. Federal Court for the Northern

District, Eastern Division, Chicago, Illinois, through an Interlocutory Order has claimed Jurisdiction Over The Person of the New York Defendant Beneficiary under the Illinois Long Arm Statute where there was no Personal Service of Process effected on the Defendant nor there ever was any business transaction conducted by the Defendant within the State and also because the Federal Court in Chicago fails to give Full Faith and Credit to the Proceedings, Records and Decisions of the Probate State Court of the Twelfth

Judicial Circuit Court, Will County, Illinois in dealing with the same alleged claim and evidence.

(ii) The date of the Memorandum and Order sought to be reviewed was entered on June 10, 1985 in the U.S.Federal District Court for the Northern District Eastern Division, Chicago, Illinois, and the NOTICE OF APPEAL to the U.S.Supreme Court was filed on June 29, 1985 in the same U.S.Federal District Court for the Northern District, Eastern Division, Chicago , Illinois.

STATUTORY PROVISIONS

Statutory Provisions and Cases believed to have jurisdiction for this Appeal are as follows:

Hanson v. Denckla, 397 U.S. 235, 251 1958, Page 242;

Smith v. Ellington, 348F.2nd 1021 (6th Circuit) 1965;

Safeguard Mutual Insurance Co. Maxwell, 53F.R.D., 116(F.R.D.) (E.D.Pa.1971)

Rule 4(f) of the Federal Rules of Civil Procedure (See Appendix D)

Section 1738, Judiciary and Judicial Procedure, Title 28, U.S. Code (See Appendix E)

CONSTITUTIONAL PROVISIONS

Section 1, Article IV of the U.S. Constitution (See Appendix F)

Section 1, Amendment (XIV) of the U.S. Constitution (See Appendix G)

STATEMENT OF THE CASE

In an attorneys' fees dispute, Plaintiff from Illinois, who represented Defendant from New York in an Estate Matter in the State Probate Court of the Twelfth Judicial Circuit Court, Will County, Joliet, Illinois, on a Contingent Agreement for approximately 3 months claims Jurisdiction Over The Person of the Defendant in the U.S.Federal District Court, for the Northern District, Eastern Division

Chicago, Illinois, beyond the 100 Miles Territorial Limits and where there's been no Personal Service of Process effected on the Defendant who resides in the State of New York.

The Plaintiff states additionally that the signing of the Contingent Agreement by both Parties for legal representation in the Estate Matter in the State Probate Court in Will County, Illinois, constituted business transaction conducted by

the Defendant within the State of Illinois and therefore, under the Illinois Long Arm Statute, Plaintiff claims Jurisdiction over the Person of the Defendant, and the U.S.Federal District Court in Chicago, agrees with the Plaintiff and thereupon has entered an Order to this effect.

Further, although the Plaintiff also filed a Lien for the same alleged claim for attorneys' fees in the State Court, filing the same Evidence and arguing the same issues, the U.S.Federal District Court in Chicago, fails to give Full Faith and Credit to the Records and Decisions of the State Court which already denied the

Plaintiff's Lien based upon the same Claim for attorneys' fees filed by the Plaintiff in the U.S. Federal District Court, Chicago, Illinois.

At the present time, the proceedings in the U.S.Federal District Court are still pending although dismissed for Lack of Jurisdiction in the Seventh Circuit Appellate Court.

REASONS FOR CONSIDERATION

Assertion of In Personam Jurisdiction over the Non-Resident Defandant by the U.S.Federal District Court for the Northern District, Eastern Division, in Chicago,

Illinois even in an Interlocutory Order violates Due Process requirements and Section 1 of the Fourteenth Amendment of the Federal Constitution, where the Defendant Beneficiary who resides in New York has not been personally served and where there was no business transaction conducted by the Defendant Beneficiary in Illinois in this alleged claim for Attorneys' Fees in the State Probate Court for representing the Beneficiary in the Estate Matter for approximately 3 months on Contingency and where there was no recovery nor Trust funded.

Further, by not giving Full Faith and Credit to the Record and

Decisions for the same alleged claim by the Plaintiff, in the State Probate Court of the Twelfth Judicial Circuit Court in Will County, Joliet, Illinois, the U.S. Federal District Court in Chicago, Illinois offends Section 1738 of Judiciary and Judicial Procedure, Title 28, U.S.Code and Section 1, Article IV of the Federal Constitution.

Respectfully submitted,

Patricia A. Fahey
Defendant-Appellant

C/O Ms Marte Skorupskyj
255 West End Avenue
New York, New York
10023

Sworn and subscribed
to before me this day
of September, 1985.

_____

NOTARY PUBLIC

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES, WASHINGTON, D.C. FROM THE U.S. FEDERAL DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

Patricia A. Fahey,

Appellant - Defendant

Vs.

James E. Beckley
James E. Beckley & Associates,

Appellee - Plaintiff

ON APPEAL FROM U.S. DISTRICT COURT

Case No. 82 C 121

NOTICE OF FILING

TO: James E. Beckley
James E. Beckley & Associates
Suite 630
135 South LaSalle St.
Chicago, Illinois 60603

Please take notice that on

_____ there

was filed with the Clerk of the U.S. Supreme Court, Washington, D.C., Appellant-Defendant re-typed (40 copies) Jurisdictional Statement as per U.S. Supreme Court Clerk request, and of which (3) copies are hereby served upon you.

_____

PATRICIA A. FAHEY
C/O Ms Marte Skorupskyj
255 West End Avenue
New York, New York
10023

CERTIFICATE OF SERVICE

I, _____

on oath state that I caused (3) copies of the aforementioned document to be served upon the party

listed above by depositing copy of said document in a U.S.Postal Box in NEW YORK, NEW YORK, on this _____day of September, 1985.

_____

SWORN AND SUBSCRIBED TO BEFORE ME, _____THIS DAY OF SEPTEMBER, 1985.

_____

NOTARY PUBLIC

APPENDIX " A "

JAMES E. BECKLEY & ASSOCIATES,
a professional corporation,

Plaintiff,

vs.

PATRICIA A. FAHEY,

Defendant.

No. 82 C 121

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

June 10, 1985

MEMORANDUM AND ORDER

Moran, James B.
Judge, United States District Court

On October 18, 1984 this court conditionally granted defendant's motion to dismiss on grounds of improper service. Plaintiff was given thirty days to supplement the record as to the source of the Philadelphia address at which service had been attempted, or to properly serve the defendant. Plaintiff supplemented the record as requested and reported to the court that it had served defendant at a New York address in September 1984 in a fashion complying with New York law. On November 19, 1984 this court ordered defendant to answer or otherwise plead to the complaint by December 10, 1984. Defendant subsequently

moved to dismiss the action for lack of jurisdiction and improper service under Rules 12(b)(1) through 12(b)(6) of the Federal Rules of Civil Procedure. 1/

Rules 12(b)(4)-(5)

Much of the material filed by defendant is directed towards the adequacy of service. As shown by its November 19, 1985 order, *

1/ The court interprets the materials submitted by the defendant as also constituting an answer which denies all of the plaintiff's substantive claims.

(* Please note that the date as written in the above Order, " November 19, 1985 " it's incorrect. The date should be November 19, 1984.)

this court has been satisfied that the defendant was properly served in September 1984. Nothing now submitted by defendant suggests that this conclusion was erroneous.

Defendant supplies a copy of a state court order of August 9, 1984 invalidating plaintiff's lien against the estate of Patrick Fahey. This order does not sap the vitality of plaintiff's action, which is for fees earned in representing defendant, or conflict with this court's order concerning service of process, or create a constitutional question.

Rules 12(b)(1)-(b)(3)

This court has subject matter

jurisdiction under 28 U.S.C. #1332. The parties are of diverse citizenship and the amount in controversy exceeds $10,000. Personal jurisdiction over the defendant appears to comport with both the Illinois long arm statute, Ill. Rev. Stat. ch. 110, #2-209, and the requirements of due process, or at least defendant has not indicated why it does not. Defendant allegedly entered into an agreement with the plaintiff knowing that it was to be performed in Illinois. See Biltmoor Moving & Storage Co. v. Shell Oil Co., 606 F.2d 202, 207 (7th Cir. 1979). Venue is proper in this district under 28 U.S.C. #1391(a) because this is the district in which

plaintiff resides.

Rule 12(b)(6)

A motion to dismiss must be denied unless it is clear that there is no set of facts which plaintiff can prove which would entitle plaintiff to relief. Defendant has failed to show that plaintiff has not pled a valid claim. Rather, she contests the specifics of the claim. Dismissal is thus inappropriate.

CONCLUSION

Defendant's motion is denied in all respects. She is directed to hereafter defend this action on the merits either *pro se* or by counsel.

APPENDIX "B"

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

CHICAGO, ILLINOIS 60604

No. 85-2124

JAMES E. BECKLEY & ASSOCIATES,
A Professional Corporation,
Plaintiff-Appellee,

vs.

PATRICIA A. FAHEY,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 82-C-121,
Hon. James B. Moran,
Judge.

BEFORE:

Hon. Walter J. Cummings,
Chief Judge

Hon. Harlington Wood, Jr.,
Circuit Judge

Hon. Jesse E. Eschbach,
Circuit Judge

July 31, 1985

ORDER

This matter is before the Court on the following documents:

1. The "MOTION TO DISMISS

APPEAL" filed by plaintiff-appellee on July 15, 1985,

2. The "NOTICE TO CLERK OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, CHICAGO, ILLINOIS PURSUANT TO RULE 44 OF THE FEDERAL RULES OF APPELLATE PROCEDURE" filed by defendant-appellant on July 22, 1985 and

3. The "REQUEST TO DISPENSE RESPONDING" filed by defendant-appellant on July 25, 1985.

A district court's denial of a motion to dismiss for lack of jurisdiction and improper service is not a final appealable Order. Accordingly,

IT IS ORDERED that this case is DISMISSED for lack of jurisdiction.

APPENDIX "C"

ON APPEAL TO THE SUPREME COURT OF OF THE UNITED STATES, WASHINGTON, D.C., FROM THE U.S. FEDERAL DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

JUNE 29, 1985

JAMES E. BECKLEY & ASSOCIATES,
PLAINTIFF

Vs.

PATRICIA A. FAHEY
DEFENDANT.

ON APPEAL FROM U.S.DISTRICT COURT

Case No. 82C - 121

NOTICE OF APPEAL

I, Patricia A. Fahey, Resident of New York, Citizen of New York and

Citizen of the United States, under the Authority of the Full Faith and Credit Clause of Article IV of the Federal Constitution and under the Authority of Article III, Section 2 of the Federal Constitution (Controversies between Citizens of Different States) and also under the Due Process Clause of the Fourteenth Amendment of the Federal Constitution (Personam Jurisdiction), hereby appeal to the Supreme Court of the United States the Memorandum and Order herewith attached, entered on June 10th, 1985 by the Honorable James B. Moran in the U.S. Federal District Court for the Northern

District of Illinois,Eastern Division.

Respectfully submitted,

Patricia A. Fahey
Defendant-Appellant

My Address being:

c/o Ms Marte Skorupskyj
255 West End Avenue
New York, New York
10023

SWORN AND SUBSCRIBED TO
BEFORE ME THIS DAY OF
JUNE, 1985.

_____

NOTARY PUBLIC

ALICE DANGERFIELD
Notary Public State of New York
No. 5912900
Qualified in New York County
Commission Expires March 30, 1986

APPENDIX "D"

TITLE 28

RULES OF CIVIL PROCEDURE

RULE 4. PROCESS

(f) TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held, and when authorized by a statute of the United States or by these rules, beyond the territorial limits of that state. In addition, persons who are brought in as parties pursuant to Rule 14, or as additional

parties to a pending action or a counterclaim or cross-claim therein pursuant to Rule 19, may be served in the manner stated in paragraphs (1)-(6) of subdivision (d) of this rule at all places outside the state but within the United States that are not more than 100 miles from the place in which the action is commenced or to which it is assigned or transferred for trial; and persons required to respond to an order of commitment for civil contempt may be served at the same places. A subpoena may be served within the territorial limits provided in Rule 45.

APPENDIX "E"

TITLE 28

JUDICIARY AND JUDICIAL PROCEDURE

1738. State and Territorial statutes and judicial proceedings; full faith and credit

---

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial

proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts

of such State, Territory or Possession from which they are taken.

APPENDIX "F"

CONSTITUTION OF THE UNITED STATES OF AMERICA -1787

ARTICLE IV.

SECTION I. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

APPENDIX "G"

CONSTITUTION OF THE UNITED STATES OF AMERICA -1787

AMENDMENT XIV.

SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.